

CHAPTER NO. 783

HOUSE BILL NO. 2769

By Representatives Hargrove, Davidson Kerr, Sharp, Montgomery, Patton, Walker, Godsey, David Davis, Mumpower, Caldwell

Substituted for: Senate Bill No. 2139

By Senators Womack, Crowe, Burks

AN ACT to amend Tennessee Code Annotated, Section 49-7-120; 10-7-504, relative to confidential records.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-7-120(a)(2), is amended by deleting the current language in its entirety and substituting the following:

(2) "Proprietary information" means:

(A) Any information used directly or indirectly in the business of any person or entity which gives such person or entity an advantage or an opportunity to obtain an advantage over competitors who do not know or use the information, and which is disclosed by the person or entity to the public higher education institution; or

(B) Any information received, developed, generated, ascertained, or discovered by the public higher education institution under terms of a contract for the development thereof which recognizes the proprietary interest of the person or entity in the information.

SECTION 2. Tennessee Code Annotated, Section 49-7-120(a)(3), is amended by deleting the current language in its entirety and substituting the following:

(3) "Sponsored research or service" means any research, analysis, or service conducted pursuant to grants or contracts between the public higher education institution and a person or entity. It does not include research, analysis, or service conducted under an agreement with other agencies of the State of Tennessee, unless such research, analysis, or service is a subcontract to a sponsored research or service contract with a person or entity; and

SECTION 3. Tennessee Code Annotated, Section 49-7-120(a)(4), is amended by deleting the current language in its entirety and substituting the following:

(4) "Trade secrets" means any information, knowledge, items, or processes used directly or indirectly in the business of a person or entity which give the person or entity an advantage or an opportunity to obtain an advantage over competitors who do not know or use them.

SECTION 4. Tennessee Code Annotated, Section 49-7-120(b), is amended by deleting the current language in its entirety and substituting the following:

(b) The following records or materials, regardless of physical form or characteristics, received, developed, generated, ascertained, or discovered

during the course of sponsored research or service conducted by a public higher education institution shall not be open for public inspection:

- (1) patentable material or potentially patentable material;
- (2) proprietary information;
- (3) trade secrets or potential trade secrets, including without limitation manufacturing and production methods, processes, materials, and associated costs;
- (4) business transactions, commercial, or financial information about or belonging to research subjects or sponsors;
- (5) summaries or descriptions of sponsored research or service, unless released by the sponsor;
- (6) personally identifiable information; and
- (7) any other information that reasonably could affect the conduct or outcome of the sponsored research or service, the ability to patent or copyright the sponsored research, or any other proprietary rights any person or entity might have in the research or the results of the research, including without limitation, protocols, notes, data, results, or other unpublished writing about the research or service.

SECTION 5. Tennessee Code Annotated, Section 49-7-120(c), is amended by deleting subsection (c) in its entirety and redesignating the subsequent subsections accordingly.

SECTION 6. Tennessee Code Annotated, Section 49-7-120(d), is amended by deleting the current language in its entirety and substituting the following as the appropriately redesignated subsection:

() Nothing in this section shall prohibit voluntary disclosure of the records or materials by the sponsor or by the public higher education institution, with the consent of the sponsor.

SECTION 7. Tennessee Code Annotated, Section 49-7-120(e), is amended by deleting the current language in its entirety and substituting the following as the appropriately redesignated subsection:

() The public higher education institution shall make available, upon request by a citizen of Tennessee, the titles of sponsored research or service projects, names of the researchers, and the amounts and sources of funding for such projects.

SECTION 8. Tennessee Code Annotated, Section 49-7-120(f), is amended by deleting subsection (f) in its entirety and redesignating the subsequent subsections.

SECTION 9. Tennessee Code Annotated, Section 49-7-120(g), is amended by deleting the current language in its entirety and substituting the following as the appropriately redesignated subsection:

() All records or materials, regardless of physical form or characteristics, received, developed, generated, ascertained, or discovered

during the course of research or service that is not sponsored research or service, as defined in subsection (a)(3) of this section, shall not be open for public inspection if the disclosure of the information reasonably could affect the conduct or outcome of the research or service, the ability of the public higher education institution to patent or copyright the research, or any other proprietary rights any person or entity might have in the research or the results of the research, including without limitation, proprietary information and trade secrets received from a person or entity cooperating in the research, protocols, notes, data, results, or other unpublished writing about the research or service.

SECTION 10. Tennessee Code Annotated, Section 10-7-504, is amended by adding the following language as a new subsection (a)(18):

(a)(18) Computer programs, software, software manuals, and other types of information manufactured or marketed by persons or entities under legal right and sold, licensed, or donated to Tennessee state boards, agencies, or higher education institutions shall not be open to public inspection; provided, that computer programs, software, software manuals, and other types of information produced by state or higher education employees at state expense shall be available for inspection as part of an audit or legislative review process.

SECTION 11. Tennessee Code Annotated, Section 49-7-120, is amended by adding the following as an appropriately designated subsection:

() Upon agreement of a subject and the clinical study physician assigned to the human subject and upon the withdrawal, termination or conclusion of the research project, the assigned clinical study physician shall, upon notification and request of the human subject, disclose all pertinent medical information in that human subject's research records. Such disclosure shall take place as soon as reasonably practical not to exceed three (3) business days.

SECTION 12. Tennessee Code Annotated, Section 49-7-120, is amended by adding the following as an appropriately designated subsection:

() A public higher education institution shall file an annual report with the Attorney General and Reporter concerning sponsored research or service closed to public inspection by this section. The annual report shall include the title, description, names of researchers, and amount and source of funding for sponsored research or service contracts executed during the previous twelve-month period. The annual report shall be made available for inspection by any citizen of Tennessee upon request made in accordance with Tennessee Code Annotated, Section 10-7-503. Upon request, the Attorney General and Reporter may review the sponsored research or service contract or other records related to the project. Any records reviewed by the Attorney General and Reporter under this subsection shall not be open for public inspection.


SECTION 13. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: May 11, 2000


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 22nd day of May 2000


DON CONQUIST, GOVERNOR